IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

WP(C).No. 27969 of 2007(D)

PETITIONER:

V.KESAVAN, S/O.VELUMBAN, AGED 56 YEARS,
ATTENDER (RETD) K.S.D.C.C.C.R.C. LTD.,
KARAZHITHARA VEEDU, SOORANADU.P.O., KOLLAM.

BY ADV. SRI.N.UNNIKRISHNAN

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY, HOME DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE KERALA STATE DEVELOPMENT CORPORATION FOR CHRISTIAN CONVERTS AND RECOMMENDED COMMUNITIES LTD., KOTTAYAM, REP: BY ITS MANAGING DIRECTOR.

3. THE CHAIRMAN, KERALA STATE DEVELOPMENT CORPORATION FOR CHRISTIAN CONVERTS AND RECOMMENDED COMMUNITIES LTD., NAGAMPADAM, KOTTAYAM.

4. THE PRINCIPAL SECRETARY TO THE GOVERNMENT, SC/ST DEVELOPMENT, F.SECTION, SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.I.V.PRAMOD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21/11/2007, THE COURT ON 26/11/2007 DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

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W.P.(C)NO. 27969 OF 2007 D

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Dated this the 26th day of November, 2007

J U D G M E N T

The challenge in this writ petition is against Ext.P8, an order of the Managing Director issued on behalf of the 2nd respondent according sanction for the prosecution of the petitioner for offences punishable under the Prevention of Corruption Act, 1988. Though petitioner is a retired attender of the 2nd respondent, he is facing prosecution pursuant to Ext.P8 and it is on that basis the present writ petition has been filed. The contentions that are raised against Ext.P8 are

1) That Ext.P8 is issued by the Managing Director and as the Board of Directors is the appointing authority, only appointing authority could have granted sanction and hence Ext.P8 is illegal.

2) In Ext.P6 opinion rendered by the then Advocate General of the State, discloses that there is no basis for prosecuting the petitioner and Ext.P8 sanction being contradictory to Ext.P6, is illegal.

3) It is also contended that there was no material before the authorities to conclude that the petitioner deserved to be prosecuted and hence Ext.P8 is invalid for non application of mind.

4) That the petitioner is not liable to be prosecuted for want of sufficient materials and also for the reason that he is already discharged in CC 27/03 by Ext.P2 order.

2. I have considered the submissions made by the learned counsel for the petitioner.

3. As far as the first contention that it was only the Board of Directors of the Corporation, which had the competence to grant sanction to prosecute the petitioner is concerned, the very contention is belied by the contents of Ext.P8 itself. Ext.P8 is the proceedings of the Board of Directors of the Corporation, which concludes by stating that the Board of Directors accord sanction for the prosecution of the offenders including the petitioner.

4. However, Ext.P8 has been issued by the Managing Director of the Corporation, but here again the said order has been issued by the Managing Director on behalf of the Board of

Directors. Therefore decision is that of the Board of Directors and the communication has been issued on behalf of the Board of Directors. If that be so, I must hold that the decision to prosecute the petitioner is that of the Board of Directors only and hence the first contention raised by the petitioner is unacceptable.

5. Petitioner contended that Ext.P6, the opinion furnished by the then Advocate General of the State is against Ext.P8 decision. Factually the petitioner is right in his contention. But then, I do not find any legal support for the contention. My reason for this conclusion is that at best, Ext.P6 is only to be taken as an opinion and the appointing authority is always entitled to take a view different from what is given in Ext.P6. By no stretch of imagination can I hold that the appointing authority is bound by the view taken by the Advocate General in Ext.P6. Ext.P6 opinion is only one of the materials that is available before the appointing authority and it is upto the appointing authority to assess the materials available and take a decision thereon. In the process, if the appointing authority has chosen to deviate

from the opinion of the Advocate General, there is nothing illegal in such a decision.

6. It is true that the petitioner was discharged by the court of the Enquiry Commissioner and Special Judge, Trichur by Ext.P2 order. A reading of Ext.P2 discloses that the petitioner was discharged from the case for the reason that the petitioner and other persons involved in the case were appointed in the company by the resolution passed by the Board of Directors and therefore, the Enquiry Commissioner took the view that the Board of Directors being the Appointing authority, the competent authority to remove the petitioner can only be the Board of Directors. On this basis, it was held that the sanction for prosecution issued by the Managing Director of the Company was invalid and it was for that reason, the petitioner was discharged. However, the discharge of the petitioner does not prevent the appointing authority to consider the matter and cure the defect that was pointed out in Ext.P2 and then proceed from that stage. It is this process which has been adopted by the appointing authority in Ext.P8. In view of this, for the only reason that the

accused has been discharged on a technical ground, I am not prepared to say that he should be left scot free from the offences, if any, he has committed.

7. The last submission made by the counsel for the petitioner is that Ext.P8 is bad for non application of mind. This contention is raised on the basis that there was no material available before the Board of Directors to sanction prosecution against the petitioner. However, in Ext.P8, it is stated that the Board of Directors of the Corporation after carefully examining all the relevant aspects in respect to the allegations and circumstances of the case was satisfied that the accused including the petitioner had committed the offences and decided that they should be prosecuted. In this proceedings, this court is not justified in going in for a deeper probe that is what is stated in Ext.P8. On the materials that is placed before me, and on a perusal of Ext.P8, what is discernible is that the Board of Directors had taken into account all relevant aspects while taking Ext.P8 decision.

8. Thus on the materials, I am not in a position to

conclude that the decision is bad for non application of mind.

9. Thus, on an anxious consideration of the contentions raised by the petitioner, I do not find merit in any of them. However, my findings herein above, will not stand in the way of the petitioner urging any legal contention that is available for him in the course of the prosecution the he may have to face.

Writ petition fails and is dismissed.

ANTONY DOMINIC,
JUDGE

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